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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,324	09/15/2003	Harold D. Beck	03-11	3791
30699	7590	10/05/2006	EXAMINER	
DAYCO PRODUCTS, LLC			AUGHENBAUGH, WALTER	
1 PRESTIGE PLACE			ART UNIT	
MIAMISBURG, OH 45342			PAPER NUMBER	

1772

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/663,324

Applicant(s)

BECK ET AL.

Examiner

Walter B. Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,8,10 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,10 and 21-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 22, 2006 has been entered.

### ***Acknowledgement of Applicant's Amendments***

2. The amendments made in claims 1, 2, 8, 10, 21 and 22 presented in the Amendment filed September 22, 2006 (Amdt. B) have been received and considered by Examiner.
3. New claims 23-27 presented in Amdt. B have been received and considered by Examiner.
4. The amendments made in the specification in Amdt. B have been received and considered by Examiner.

## **WITHDRAWN REJECTIONS**

5. The 35 U.S.C. 112 rejection of claim 10 made of record in paragraph 6 of the previous Office Action mailed March 23, 2006 has been withdrawn due to Applicant's amendment in claim 10 in Amdt. B.

## **NEW OBJECTIONS**

### ***Specification***

6. The amendment filed September 22, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not

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supported by the original disclosure is as follows: "0.5 to" added to page 5 in Amdt. B and the replacement of "2" with "8" in the paragraph bridging pages 8 and 9 in Amdt. B.

Applicant is required to cancel the new matter in the reply to this Office Action.

7. The amendment filed September 22, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: a tubular structure (in regard to material added to claim 1) or hose (in regard to material added to claim 10) consisting essentially of a combination of about 30% to 75% of the matrix and 25% to 70% of the additive is not supported in the specification as originally filed. A tubular structure (in regard to material added to claim 8) or hose (in regard to material added to claim 24) consisting essentially of a combination of about 45% to 60% of the matrix and 40% to 55% of the additive is not supported in the specification as originally filed.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***NEW REJECTIONS***

#### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 1, 8, 10 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the

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relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A tubular structure (in regard to claim 1) or hose (in regard to claim 10) consisting essentially of a combination of about 30% to 75% of the matrix and 25% to 70% of the additive is not supported in the specification as originally filed. A tubular structure (in regard to claim 8) or hose (in regard to claim 24) consisting essentially of a combination of about 45% to 60% of the matrix and 40% to 55% of the additive is not supported in the specification as originally filed. In further regard to claim 8, the recitation "up to about 8%" (line 7) is not supported in the specification as originally filed. In further regard to claim 24, the recitation "up to about 8%" (line 8) is not supported in the specification as originally filed, and the recitation "0.5 to 5%" (line 21) is not supported in the specification as originally filed.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 26 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 26 and 27 recite the limitation "said inner tubular structure" in the first line of both claims. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 1, 2, 8, 10 and 21-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Igarashi et al. (USPN 5,223,571).

In regard to claims 1 and 10, Igarashi et al. teach a vulcanized tubular structure (hose, col. 5, lines 49-50). Igarashi et al. teach that the tubular structure is automotive and fluid-conveying (col. 2, lines 54-57). Igarashi et al. teach that the tubular structure exhibits heat tolerant characteristics because Igarashi et al. teach that the tubular structure is heat resistant (col. 2, lines 50-54). Any hose is resistant to some degree of pressure, so the hose of Igarashi et al. necessarily exhibits pressure resistant characteristics. The tubular structure of Igarashi et al. exhibits hydrocarbon fluid impermeable characteristics since Igarashi et al. teach that the tubular structure is gas impermeable (col. 2, lines 50-53). The tubular structure of Igarashi et al. comprises an ethylene-vinyl acetate copolymer matrix (col. 3, lines 32-35 and col. 4, lines 22-26) where the ethylene-vinyl acetate copolymer matrix contains greater than 40% vinyl acetate (col. 3, lines 48-51). Igarashi et al. teach that the composition contains not more than 250 parts by weight of the ethylene-vinyl acetate copolymer per 100 parts by weight of the second resin of the composition (the "CPA" resin of Igarashi et al., col. 3, lines 48-51), a range that overlaps with the claimed range of about 30 to 75% ethylene-vinyl acetate copolymer (e.g.  $90/(90+100) =$  about 47%). Igarashi et al. teach that the composition contains up to 70 parts rubber additive per 100 parts CPA (col. 3, line 64-col. 4, line 7), a range that falls within the claimed range of about 25 to 70% (e.g.  $70/(70+90+100) =$  about 27%).

In regard to claim 2, Igarashi et al. teach the ethylene-vinyl acetate copolymer matrix contains more than 60% vinyl acetate by weight of the copolymer since Igarashi et al. teach that the ethylene-vinyl acetate copolymer contains not more than 40 mol % ethylene (consequently, at least 60 mol % vinyl acetate, col. 3, lines 39-41).

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In regard to claim 8, Igarashi et al. teach that the tubular structure consists essentially of: 30 to 75% ethylene-vinyl acetate copolymer (e.g.  $90/(90+100)$  = about 47%, col. 3, line 64-col. 4, line 7) and up to 70 parts rubber additive per 100 parts CPA (col. 3, line 64-col. 4, line 7), a range that falls within the claimed range of about 40 to 55%.

In further regard to claim 10, Igarashi et al. teach that the tubular structure is for conveying refrigerant in car coolers, air conditioners and other refrigerant-using devices (col. 2, lines 54-57), a teaching which falls within the scope of fluids in an automotive engine cooler, transmission oil cooler, power transmission cooler, radiator or heater.

In regard to claims 21 and 22, Igarashi et al. teach the hose as discussed above. The recitations "is a radiator hose" and "is a heater hose" are intended use recitations that have not been given patentable weight, since it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987).

In regard to claim 23, Igarashi et al. teach the ethylene-vinyl acetate copolymer matrix contains more than 60% vinyl acetate by weight of the copolymer since Igarashi et al. teach that the ethylene-vinyl acetate copolymer contains not more than 40 mol % ethylene (consequently, at least 60 mol % vinyl acetate, col. 3, lines 39-41).

In regard to claim 24, Igarashi et al. teach that the tubular structure consists essentially of: 30 to 75% ethylene-vinyl acetate copolymer (e.g.  $90/(90+100)$  = about 47%, col. 3, line 64-col. 4, line 7) and up to 70 parts rubber additive per 100 parts CPA (col. 3, line 64-col. 4, line 7), a range that falls within the claimed range of about 40 to 55%.

In regard to claims 25-27, Igarashi et al. teach a blend of the ethylene-vinyl acetate copolymer matrix and the rubber additive (col. 3, line 64-col. 4, line 7).

***Response to Arguments***

14. Applicant's arguments presented on pages 12-17 of Amdt. B regarding the 35 U.S.C. 102 rejection of claim 1 have been fully considered but are not persuasive.

Applicant's arguments from page 12 through the top of page 15 have been addressed in previous Advisory Actions. This portion of the arguments is a copy of the arguments presented in the After Final Amdt. filed August 23, 2006.

Applicant's arguments on page 15 regarding how the hose of Igarashi et al. is used is not relevant to the patentability of the claimed article.

Applicant argues on page 15 that CPA is excluded from the scope of the claim, but Applicant has not shown that the CPA "materially affect the basic and novel characteristic(s)" of the claimed invention, and therefore whether or not CPA is excluded from the scope of the claim. MPEP 2111.03.

Applicant's statement that "[g]as relates to the state of the material" and the related statements in lines 2-6 of page 10 of the After Final Amdt. filed June 6, 2006 are unsupported: Applicant has not provided convincing evidence showing that Igarashi et al. intends "gas" to refer solely, or at all, to "the state of the material". A dictionary definition does not cast any light on which definition or definitions of "gas" Igarashi et al. intended to invoke in the patent.

In regard to Applicant's arguments on pages 16-18, Applicant has not shown that the CPA "materially affect the basic and novel characteristic(s)" of the claimed invention, and therefore whether or not CPA is excluded from the scope of the claim. MPEP 2111.03.



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*Conclusion*

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh  
09/29/06

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10/1/06